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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Twenty-second session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 19th MEETING

Held at the Palais Wilson, Geneva,
on Monday, 8 May 2000, at 3 p.m.

Chairperson: Mrs. BONOAN-DANDAN

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* The summary record of the second part (closed) of the meeting appears as document E/C.12/2000/SR.19/Add.1.

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GE.00-41962 (E)

The meeting was called to order at 3.05 p.m.

SUBSTANTIVE ISSUES ARISING IN THE IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 3) (continued)

Draft general comment 14 on the right to the highest attainable standard of health (continued)

1. The CHAIRPERSON said that the Committee would hear first from the remaining speakers on her list: three representatives of specialized agencies and programmes, two representatives of non-governmental organizations and two individual experts. After that she hoped to start the adoption process.

2. Mr. RIEDEL said that he felt that Committee members should first have a chance to consider written versions in their own language of the important suggestions made by representatives of the specialized agencies at the previous meeting. If he could have another day to study all the amendments put forward, he would be able to prepare a consolidated proposal for consideration thereafter, unless, of course, the Committee felt that the degree of consensus was sufficient to make that unnecessary.

3. Mr. SFEIR-YOUNIS (World Bank) said that his agency had learned a great deal from the draft general comment, which addressed a number of issues that had remained in a state of confusion not only in the public debate but within the Bank itself. It had been a great help in understanding how the different dimensions of "universality" in the application of human rights could be realistically defined and implemented, by outlining the most important components to be taken into account in assessing the nature and scope of obligations and responsibilities. The document brought out the great importance of formulating an appropriate health sector development strategy. It had also brought sharply to the surface the need to recognize all the sectoral linkages as well as establishing a more realistic understanding of the role played by economic growth and macroeconomic management and the need to mainstream human rights into economic planning and implementation.

4. The World Bank fully agreed with the document in areas such as the major importance of paying attention to the materialization of rights and the relevance of financial, human and institutional resources in that process. Clearly, more than money was involved. Other areas of agreement included the importance of macroeconomic growth and development and long-term equity issues, as well as of macroeconomic and sectoral approaches to strategic planning and implementation, since improving the health sector depended on the performance of other sectors in the economy. The Bank understood the need to focus on the progressive realization of rights and on the highest attainable standards, as well as the concern for quality of service and social and cultural acceptability. It also appreciated the major importance of paying special attention to the relationship between health goals and health rights and indigenous peoples and their cultures. A culturally appropriate and culturally sustainable approach was essential to benefiting the poor and minorities.

5. Poverty, and absolute poverty in particular, represented the most flagrant violation of all economic, social and cultural rights, including health. That was why the World Bank's mandate

as an institution had been defined around the eradication of poverty. It recognized, however, the relationship between policy formulation and the realization of rights. Often there were major structural and institutional constraints on the full mainstreaming of health rights into economic development. The Bank felt strongly that more attention needed to be paid to the realization of rights in relation to regional and global public goods and public ills and to the institutional and political constraints on mainstreaming all those considerations into country strategies at the macro and regional levels. The Bank was extremely concerned about the effects of globalization on the creation of public goods. The global dimension of economic systems in relation to the issues addressed in the general comment deserved more attention. The Bank had explicitly recognized the theme of global public goods and, at the most recent meeting of the Development Committee of the World Bank and the International Monetary Fund, major attention had been given to the HIV/AIDS situation in all countries. A sharper focus might be needed, therefore, on the international dimensions of and conditions for the realization of the right to health.

6. It could not be assumed that countries were ready to mainstream human rights into economic development in general and into the health sector in particular. There were basic connections between human rights and equity, and between human rights and empowerment that needed to be taken into account. Even where societies decided to address those issues, further essential ingredients were good governance and institutional capacity. Affordability was also a central consideration. Focusing on who actually paid for the materialization of rights that were expected to be universal raised many political, economic and ethical dilemmas. Participation was equally fundamental, as was the need to take a long-term view of the development process and ensure its sustainability.

7. Another important aspect of mainstreaming rights was targeting the poor, which constituted a paramount problem for many developing countries. A fundamental prerequisite was a major change in the value system on which economic development was grounded. Rights were violated because development was guided by values that were exclusive rather than inclusive. Mainstreaming demanded a value system where human rights were not residuals of other values and beliefs but an integral part of all activity. It demanded nothing less than a new social contract.

8. In conclusion, he said that while the Bank was completely convinced of the importance of mainstreaming human rights, there was a long way to go from the idea to its application. Unless some of the elements he had mentioned were taken into account, it was inconceivable that human and health rights could be mainstreamed in a holistic and sustainable way. It was frightening to think of a world in which human rights were not respected. However, mainstreaming would be instrumental only in cases where human rights were central to and not merely a residual part of the development process. The instruments, language and targets of mainstreaming must be grounded in values that cared for the poor, the voiceless and the powerless. Targeting must start with them.

9. Ms. THOMAS (International Labour Organization) congratulated Mr. Riedel on having prepared a comprehensive and well-thought-out draft general comment on the right to health. She stressed the importance of general comments in serving to bring the interdisciplinary aspects of human rights together. She was glad to note that most of her agency's suggestions had already been incorporated in the text, although the problem of poverty was perhaps somewhat

underemphasized. Her agency was particularly pleased by the inclusion of references to the importance of preventive care. It was important for the comment to strike a balance between cure and prevention and for emphasis to be placed on the issues of equity and non-discrimination. It was also important that a gender perspective should be included and special reference made to vulnerable groups, such as the disabled and young persons, as well as to indigenous peoples. She had been pleased by the emphasis placed on the difficulties caused by the failure to enforce health regulations. A particular point in that connection, with regard to the rights of women, was the special rights that should be accorded to pregnant and lactating women with a view to preserving their health and that of their children.

10. Ms. MALUWA (UNAIDS) said that since its inception UNAIDS had recognized that the protection and promotion of human rights was an essential component of an effective response to the AIDS epidemic at the national, regional and international levels. She had three broad comments on the text of the general comment. First, she felt that insufficient emphasis was placed on access to care and treatment, as well as on access to drugs. Second, in regard to non-discrimination and equal treatment, it should be noted that the Commission on Human Rights had confirmed that "other status" was to be interpreted as including health status, HIV/AIDS in particular. Some reference should be made to that important jurisprudence in the draft comment. Lastly, lack of enjoyment of health rights in the context of HIV/AIDS led to great vulnerability to infection. The issue of vulnerability and the impact on health was not very well reflected in the general comment. She would pass on the agency's suggestions for specific amendments to certain paragraphs of the draft comment to Mr. Riedel in writing.

11. Ms. HAUSERMAN (Rights and Humanity) said that her comments would relate chiefly to the draft as it had appeared on 23 March 2000. She noted with regret that the situation in regard to health was currently worse than it had been in 1993, when she had first addressed the Committee during its Day of General Discussion on health. Since that time, the World Health Organization had established a Task Force on Health and Development as well as a Global Commission on Women's Health. Some of the concerns raised in those bodies were particularly relevant to the draft comment.

12. Mr. Ramcharan had suggested that a paragraph should be included at the start of the comment highlighting the most critical issues and the importance of a multisectoral response. Avoiding discrimination and ensuring equality of access to health care, as well as ensuring respect for dignity and autonomy in all its aspects, were among those critical issues. The problem of poverty and growing inequality between and within countries should also be stressed, as should the disadvantaged situation and growing vulnerability of women. Particular stress should be laid on inequitable access to drugs, given that one-third of humanity were denied essential drugs. In the context of the debate about privatization, the comment could be strengthened to make it clear that even where a State was no longer the provider it was not released from its obligation to regulate, facilitate and ensure the access of the poor to health care. The passage on globalization should be strengthened and she would hand Mr. Riedel an amendment to that effect.

13. She would like to make a few other minor suggestions. For example, in addition to a life of dignity, paragraph 1 should also mention the right to die in dignity. In the section on

information, stress should be placed on the adolescents' access to health information. With regard to women's rights, the need should be stressed for budgetary allocations for women's special needs as well as for attention to the removal of legal, social and cultural impediments to their access to medical treatment, such as the need to obtain a husband's permission to receive medical services. There should also be a provision regarding the right of prisoners not to be denied access to health care. In the sections dealing with laws and regulations, the text could be strengthened by reference to the need for a national drugs policy as called for in the recent resolution of the World Health Assembly. Two further suggestions concerned the need to include the obligation to regulate the blood supply and to protect against the risk of infection in health-care settings. In the context of international agreements, mention should be made of the need to consider intellectual property rights in respect of pharmaceuticals, especially in the context of the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement), and the right to share in the benefits of scientific research. Mention should also be made of the need to ensure that intellectual property rights were balanced in a manner respectful to health. Lastly, in the section on non-state actors, mention should be made of the need for health impact analysis to complement the analysis of environmental impact.

14. Mr. TESFAMICAEL GHEBREHIWET (International Council of Nurses) said that his organization worked with national nurses' associations in over 120 countries to improve standards of care worldwide. To that end, it incorporated human rights into all its programme areas. Accordingly, it considered that the link between health and human rights should be emphasized at the very outset of the general comment. Although that might sound obvious, there was too often an invisible line between them. The introductory statement should make it quite clear that it was unthinkable to speak of health when human rights were violated. His organization was also particularly interested in strengthening the role of health care providers as promoters and defenders of human rights. A reference to ethical and moral principles as underpinning the obligations of States in the provision of health care, particularly to vulnerable populations, would also strengthen the link between health and human rights.

15. His organization considered that the general comment should go further in emphasizing that respect for the culture of individuals, families and communities should not be used as a rationale for inflicting pain or causing damage to health. He referred to such traditional harmful practices as female genital mutilation and nutritional taboos, which were often justified on cultural grounds. As was well known, such practices violated human rights and also damaged health, and were a typical example of the inseparability of health and human rights.

16. His last comment concerned the duty and role of health professionals in the interface between health and human rights. Quite often, health care providers were victimized for providing care and support to people whose human rights had been violated, such as victims of torture, detainees and prisoners. Such victimization could force them to draw a line between health and human rights instead of integrating them. His organization therefore proposed that a general reference should be made in the document to the integrity and independence of health professionals in implementing the concept of health as a fundamental human right.

17. The CHAIRPERSON said that she would call next on those individual experts who had expressed the wish to speak.

18. Mr. KENT (University of Hawaii, United States of America) said that he wished to take up the point made regarding the international global dimension of many health problems. He felt that, as it stood, the treatment of the question in the draft general comment was too weak and that much work still remained to be done in that respect. Simply calling for greater attention was not enough. Also, lumping together the intergovernmental agencies with the other States parties was inadequate. It should be made clear that in their functioning as agents of the States the intergovernmental agencies were fully accountable with regard to the international human rights system. More work needed to be done on expanding and elaborating what had been called the "dynamic interpretation" of the Covenant regarding international obligations. It should be pointed out that the simple fact that a great deal of international activity was happening was not enough. Although participants had been instructed not to move beyond interpretation to legislation, he felt that it would be appropriate to call for the new international legislation that the scale and volume of the international health crisis required.

19. He regretted that the paragraph on coercive health treatment seemed to be restricted to forced treatment in experimental situations. There was forced treatment in many other cases, for example in respect of AIDS. Broadly understood, that issue needed much more attention. Privatization, should not be assumed to be necessarily bad. It should be supported to the extent that it improved the situation in the health sector and blocked where its impact was negative.

20. Generally speaking, he was pleased to note that the General Comment had built on and learned from, and in some cases improved, previous General Comments. However, by laying out new formulations, as for example in regard to the level of obligations, some element of confusion had been introduced. He felt that it would be useful at some future stage for the Committee to consider establishing a general framework for General Comments at a more abstract level, which could then be applied to particular rights.

21. Mr. HAMILTON (Physicians for Human Rights UK) expressed satisfaction that the Committee was giving so much consideration to article 12 at the current session. His organization was concerned about the concept of health care as outlined in paragraph 3. In his opinion it would be useful to think of "health care" as a single concept, so as to distinguish the right to health from the right to health care. Physicians for Human Rights UK had also drawn the attention of the Committee to the concept of essential prerequisites, which had been introduced into paragraph 9 of the draft as "underlying determinants", and to the need in formulating research policy to give due consideration to gender-related illnesses such as prostate cancer or breast cancer. The references in paragraphs 48 to 50 to the role of the international financial institutions were especially welcome, as poverty correlated very highly with infant mortality rates and other health indicators. The Committee should give some thought to the question of the training of health professionals. If they were to contribute fully to the realization of the right to health, they had to be allowed the freedom to work properly and ethically. For example, health professionals should not be coerced into participation in acts of torture. Human rights should be part of their training, and the Committee might consider including a comment to that effect in paragraph 17 of the draft.

22. The CHAIRPERSON thanked the specialized agencies, non-governmental organizations (NGOs) and experts for their observations. She suggested that the Committee should proceed with consideration of the draft general comment paragraph by paragraph.

23. Following a discussion in which Mr. GRISSA, Mr. RIEDEL, Mr. WIMER ZAMBRANO, Mr. CEAUSU, Mr. KOUZNETSOV, Mr. TEXIER, Mr. SADI and the CHAIRPERSON took part, it was decided instead to defer consideration of the draft general comment until a later occasion.

The public part of the meeting rose at 4.10 p.m.